UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL NO. 03-12130-RGS

ERICK J. JONES

v.

CITY OF BOSTON,
MASSACHUSETTS, SUFFOLK COUNTY
DISTRICT ATTORNEY'S OFFICE, JOHN DOE,
BOSTON POLICE OFFICER, AND
JOHN FOE, BOSTON POLICE OFFICER

MEMORANDUM AND ORDER ON DEFENDANTS
CITY OF BOSTON, JOHN DOE, AND
JOHN FOE'S MOTION TO DISMISS
AND MOTION TO DISMISS BY SUFFOLK COUNTY
DISTRICT ATTORNEY'S OFFICE

July 9, 2004

STEARNS, D.J.

Plaintiff Erick Jones asserts myriad claims against the City of Boston, two (initially) unnamed police officers, the Suffolk County District Attorney's Office (SCDAO), and the Suffolk County District Attorney. The claims arise out of Jones' arrest and indictment for the alleged sexual assault of a minor. All defendants maintain that each of Jones' claims are barred by statutes of limitations. The SCDAO additionally invokes Eleventh Amendment sovereign immunity. Finally, the SCDAO contends that the district attorney and his assistants are entitled to absolute immunity for their role in Jones' prosecution.

BACKGROUND

In May of 1995, Jones was arrested by Boston police officers after being accused by an adolescent neighbor of a sexual assault. On May 24, 1995, the Suffolk County Grand Jury returned a three-count indictment charging Jones with indecent assault and

battery on a person fourteen years of age or older; rape and abuse of a child under sixteen years of age; and assault with intent to rape a child under age sixteen. On June 1, 1995, Jones entered pleas of not guilty and a $5,000 cash bail was set. On February 26, 1996, a Superior Court Justice granted a joint motion by Jones and the Commonwealth to continue the case and place Jones on a five-year term of pre-trial probation. See G.L. c. 276, § 87. Bail was then revoked and Jones was released on personal recognizance subject to his probationary conditions. On May 29, 2001, after the conclusion of the probationary term, a second Justice of the Superior Court dismissed the charges against Jones on the Commonwealth's motion. See Commonwealth v. Cheney, 440 Mass. 568, 570-571 (2003).

According to Jones' Complaint, on March 18, 2003, the attorney who had represented Jones in the criminal matter provided him with copies of the grand jury transcript, the police reports, and the alleged victim's videotaped statement. This investigatory material, according to Jones, contained "exculpatory information revealing [his] constitutional injuries." On September 5, 2003, Jones filed this civil action in Suffolk Superior Court asserting claims under 42 U.S.C. §§ 1981, 1983, 1985, 1986, and 1988, G. L. c. 258, § 2 (the Tort Claims Act), G. L. c. 258D,[1] and G. L. c. 12, §§ 11H and 11I (the State Civil Rights Act), as well as various common-law torts – assault, false imprisonment, intentional infliction of emotional distress, negligent failure to supervise, malicious prosecution, and abuse of process. On November 3, 2003, the City of Boston removed the case to the federal district court on federal question grounds. All defendants then

[1]There is no such statute. Presumably, Jones meant to cite G.L. c. 258C, the Compensation of Victims of Violent Crimes Act.

moved to dismiss the Complaint. On February 2, 2004, Jones moved to amend his Complaint to "properly name the John Doe and John Foe defendants, . . . supplement facts . . . , add defendant party, and assert proper claims for relief."[2]

DISCUSSION

"We must accept the allegations of the complaint as true, and if, under any theory, the allegations are sufficient to state a cause of action in accordance with the law, we must deny the motion to dismiss." Vartanian v. Monsanto Company, 14 F.3d 697, 700 (1st Cir. 1994). While a court ordinarily confines itself to the allegations of the complaint in ruling on a motion to dismiss, it may also look to matters of public record, Boateng v. Interamerican University, Inc., 210 F.3d 56, 60 (1st Cir. 2000), and to documents the authenticity of which are not disputed by the parties. Watterson v. Page, 987 F.2d 1, 3-4 (1st Cir. 1993).

The claims against the City of Boston, its officers, and the Suffolk County prosecutors arise solely from events that transpired in May of 1995.[3] Because Jones filed this action on October 10, 2003, more than eight years after the fact, the claims against all defendants are presumptively barred by the limitations period. All of the alleged common-law torts are governed by a three-year statute of limitations. The federal civil

---

[2]While leave to amend is to be "freely given" under Fed. R. Civ. P. 15(a), the motion may be denied where prejudice to the opposing party is shown or where the exercise is futile. See Foman v. David, 371 U.S. 178, 182 (1962) (motion properly denied where the amended claims were not viable); Roman-Martinez v. Runyon, 100 F.3d 213, 220 (1st Cir. 1996) (same); Resolution Trust Corporation v. Gold, 30 F.3d 251, 253-254 (1st Cir. 1994) (same).

[3]The proposed Amended Complaint adds an allegation that Officer Joyce gave "perjurious testimony to the grand jury" in May of 1995.

rights statutes cited by Jones are also governed by the three-year limitations period set out in G.L. c. 260, § 2A, for personal injury actions. See McIntosh v. Antonino, 71 F.3d 29, 33 (1st Cir. 1995).[4] The statute of limitations applicable to Jones' Massachusetts civil rights claims is also three years. See Pagluica v. City of Boston, 35 Mass. App. Ct. 820, 822-823 (1994).

Jones attempts to salvage the Complaint by invoking the discovery rule, an equitable doctrine under which a statute of limitations is tolled when a plaintiff has been injured by an "inherently unknowable wrong." Flynn v. Associated Press, 401 Mass. 776, 781 (1988).[5] "The discovery rule starts a limitations period running when events occur or facts surface which would cause a reasonably prudent person to become aware that he or she had been harmed." Felton v. Labor Relations Commission, 33 Mass. App. Ct. 926, 928 (1992). Jones avers that he only learned of his injuries when his attorney (on March 18, 2003) provided him with the investigative materials related to his case. This material, however, was produced to Jones' attorney in 1995 pursuant to the mandatory rules applicable to discovery in Massachusetts criminal cases. See Mass. R. Crim. P. 14(a)(1)(B) (grand jury transcripts); Mass. R. Crim. P. 14(a)(2) (recorded witness statements); G.L. c. 218, § 26A (witness statements contained in police reports). Whether

[4]The exception is 42 U.S.C. § 1986, which has a one-year statute of limitations.

[5]Under the "fraudulent concealment" branch of the discovery rule, a statute will be tolled where a wrongdoer has concealed the existence of a cause of action by means of an affirmative act done with intent to deceive. Puritan Medical Center, Inc. v. Cashman, 413 Mass. 167, 175 (1992). There is no allegation (nor could there be) that any of the defendants affirmatively concealed any relevant fact from Jones. The materials upon which Jones bases his Complaint were produced to Jones' attorney by the defendants contemporaneously with his prosecution.

it is true, as Jones claims, that his attorney only brought the material to his attention in 2003, is irrelevant. The relationship between client and attorney is based on principles of agency. Levinsky's, Inc. v. Wal-Mart Stores, Inc., 127 F.3d 122, 134 (1st Cir. 1997); Blake v. Hendrickson, 40 Mass. App. Ct. 579, 582 (1996). Jones, as the principal, is held to constructive knowledge of the information acquired by his attorney as his agent. DeVaux v. American Home Assur. Co., 387 Mass. 814, 818 (1983).[6] Because Jones had notice, constructive or actual, of his alleged harms in 1995, the discovery rule does not save the Complaint.

Jones' claims against the SCDAO and the Suffolk County District Attorney also fail on substantive grounds. A suit against a government official in his or her official capacity is the same as a suit "against [the] entity of which [the] officer is an agent." Monell v. New York City Department of Social Services, 436 U.S. 658, 690 n.55 (1978). Because of the Eleventh Amendment's Sovereign Immunity Clause, a State, its agencies, and agency officials acting in their official capacities are not "persons" subject to a federal suit for money damages under the civil rights acts. Will v. Michigan Department of State Police, 491 U.S. 58, 70 (1989); Laubinger v. Department of Revenue, 41 Mass. App. Ct. 598, 601-602 (1996); Woodbridge v. Worcester State Hospital, 384 Mass. 38, 44-45 & n.7 (1981); Commonwealth v. ELM Medical Laboratories, Inc., 33 Mass. App. Ct. 71, 76-77 (1992)

[6]While the constructive knowledge rule is different where a faithless agent has fraudulently concealed his unauthorized acts from his principal, see Sunrise Properties, Inc. v. Bacon, Wilson et al., 425 Mass. 63, 67 (1997), Jones has offered no evidence that his attorney was engaged in an independent and unauthorized act from which Jones gained no benefit. Cf. Williams v. Ely, 423 Mass. 467, 474 (1996) (where a defendant shows that an action was untimely commenced, the plaintiff bears the burden of producing facts that, if believed, would take the case outside the statute of limitations).

(same, State Civil Rights Act). The SCDAO is a state agency, and the District Attorney is an officer of the State. See Commonwealth v. Gonsalves, 432 Mass. 613, 618 (2000). Both the SCDAO and the District Attorney are therefore entitled to invoke the State's immunity from suit under the federal (and state) civil rights laws.[7]

While a state official sued in his personal capacity is a "person" for purposes of the federal civil rights laws and may therefore be liable for money damages, Hafer v. Melo, 502 U.S. 21, 25-26 (1991), Jones' attempt to name the District Attorney and his assistants in their personal capacities founders on the doctrine of absolute prosecutorial immunity.

> [A]cts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the State, are entitled to the protections of absolute immunity. Those acts must include the professional evaluation of the evidence assembled by the police and appropriate preparation for its presentation at trial or before a grand jury after a decision to seek an indictment has been made.

Buckley v. Fitzsimmons, 509 U.S. 259, 273 (1993). Thus, the allegations that the District Attorney "authorized his assistant district attorney to present the case to the grand jury" while having "had prior knowledge about the [victim's] video statement . . . containing exculpatory information," even if true, is of no bearing. As the Supreme Court explained in Imbler v. Pachtman, 424 U.S. 409 (1976), profound policy considerations

> dictate the same absolute immunity under §1983 that the prosecutor enjoys at common law. To be sure, this immunity does leave the genuinely

[7]While a state official may be sued in his official capacity for injunctive relief, Pennhurst State School and Hospital v. Halderman, 465 U.S. 89, 101-104 (1984), Jones' equitable request that all state judicial records relating to his prosecution be expunged is beyond the power of any of the named defendants to grant. If inaccurate information regarding Jones' criminal history appears in the state's CORI database, a recourse is provided by G.L. c. 6, §§ 175-177.

> wronged defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty. But the alternative of qualifying a prosecutor's immunity would disserve the broader public interest. It would prevent the vigorous and fearless performance of the prosecutor's duty that is essential to the proper functioning of the criminal justice system.

Id. at 427-428. See also Moore v. Valder, 65 F.3d 189, 194 (D.C. Cir. 1995) (a prosecutor is absolutely immune from allegations of concealing exculpatory evidence); Reid v. New Hampshire, 56 F.3d 332, 338 (1st Cir. 1995) (same). The same immunity accorded to the prosecutor who is directly performing an adjudicatory function attaches to the supervisor who sets general prosecutorial policies governing the actions of front-line prosecutors. Haynesworth v. Miller, 820 F.2d 1245, 1268-1271 (D.C. Cir. 1987).

While absolute immunity does not attach to a supervising prosecutor for acts performed in a purely administrative capacity unrelated to the prosecutorial function, he cannot be held liable on a theory of respondeat superior, Monell, 436 U.S. at 694 n.58 (1978), but "only on the basis of [his] own acts or omissions." Figueroa v. Aponte-Roque, 864 F.2d 947, 953 (1st Cir. 1989). While Jones asserts, no doubt correctly, that the District Attorney has the responsibility for the hiring, training, and supervision of his assistants, he offers no allegations flowing from this fact other than the authorization given by the District Attorney to his assistants to proceed with his prosecution, an act for which, as previously noted, the District Attorney is absolutely immune.

ORDER

For the foregoing reasons, the motions to dismiss of the City of Boston, John Doe, John Foe, the Suffolk County District Attorney's Office, and the Suffolk County District

Attorney are ALLOWED. Jones' motion to amend the Complaint is DENIED on grounds of futility.

SO ORDERED.

/s/ Richard G. Stearns

_____

UNITED STATES DISTRICT JUDGE